MONTANA LEGISLATIVE HISTORY

Chapter 264 1993

Bill H _____ S 214 Original bill & history ✓C

H. Committee on Natural Resources		S. Committee on Natural Resources	
Hearing Date(s) _____	___C	Hearing Date(s) _____	___C
3/5	✓C	2/1	✓C
_____	___C	_____	___C
_____	___C	2/5	✓C
Date Out 3/11	✓C		

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

SB 214 INTRODUCED BY WELDON, ET AL.

PROHIBIT VANDALIZING OF CAVES, PROVIDE PENALTY

1/20	INTRODUCED		
1/20	REFERRED TO NATURAL RESOURCES		
1/20	FIRST READING		
1/20	FISCAL NOTE REQUESTED		
1/25	FISCAL NOTE RECEIVED		
1/28	FISCAL NOTE PRINTED		
2/01	HEARING		
2/08	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/10	2ND READING PASSED	35	10
2/11	REVISED FISCAL NOTE REQUESTED		
2/11	3RD READING PASSED	40	10
	TRANSMITTED TO HOUSE		
2/15	REVISED FISCAL NOTE RECEIVED		
2/16	REVISED FISCAL NOTE PRINTED		
2/23	REFERRED TO NATURAL RESOURCES		
2/23	FIRST READING		
3/05	HEARING		
3/11	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/13	2ND READING CONCURRED	95	3
3/16	3RD READING CONCURRED	96	4
	RETURNED TO SENATE WITH AMENDMENTS		
3/19	2ND READING AMENDMENTS CONCURRED	47	0
3/20	3RD READING AMENDMENTS CONCURRED	41	0
3/24	SIGNED BY PRESIDENT		
3/26	SIGNED BY SPEAKER		
3/29	TRANSMITTED TO GOVERNOR		
3/31	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 264		
	EFFECTIVE DATE: 10/01/93		

SB 215 INTRODUCED BY VAN VALKENBURG, ET AL.

ALLOW COUNTY OR MUNICIPALITY TO DONATE TAX-DEED LAND FOR HOUSING

1/20	INTRODUCED		
1/20	REFERRED TO LOCAL GOVERNMENT		
1/20	FIRST READING		
2/04	HEARING		
2/10	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/11	2ND READING PASSED	43	0
2/12	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
2/23	REFERRED TO LOCAL GOVERNMENT		
2/23	FIRST READING		
3/16	HEARING		
3/26	COMMITTEE REPORT—BILL CONCURRED		
3/30	2ND READING CONCURRED	88	9
4/01	3RD READING CONCURRED	89	10
	RETURNED TO SENATE		
4/07	SIGNED BY PRESIDENT		
4/07	SIGNED BY SPEAKER		
4/13	TRANSMITTED TO GOVERNOR		
4/16	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 369		
	EFFECTIVE DATE: 04/16/93		

LC 0971/01

Senate BILL NO. 214

INTRODUCED BY Weldon, McClafferty, Bianchi, Kitzenberg, Ream, Zook, Stonington, Foster, Jergeson, Doherty, Anderson, Franklin, Christiaens, Pipinich

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE VANDALIZING OF CAVES; PROHIBITING THE DISTURBANCE, DESTRUCTION, OR REMOVAL OF CAVE MATERIALS, PLANT LIFE, AND ANIMAL LIFE; PROHIBITING THE SALE OF SPELEOTHEMS AND SPELEOGENS; GRANTING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS AUTHORITY TO ASSIST IN THE MANAGEMENT OF MONTANA'S CAVE RESOURCES; EXEMPTING A CAVE OWNER AND THE OWNER'S AUTHORIZED AGENTS FROM CERTAIN LIABILITY CONNECTED WITH USE OF A CAVE; PROVIDING A PENALTY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, caves are uncommon geologic phenomena; and

WHEREAS, minerals deposited in caves may be rare and occur in unique forms of great beauty that are irreplaceable if destroyed; and

WHEREAS, archaeological resources of significant cultural, scientific, and historic value also occur in caves and are irreplaceable; and

WHEREAS, organisms that live in caves are unusual, limited in number, and could become threatened and endangered species in the absence of protection; and

WHEREAS, caves are a natural conduit for ground water flow, are highly subject to pollution, and thus have far-reaching effects transcending property boundaries.

THEREFORE, the Legislature finds it appropriate to protect these unique natural and cultural cave resources and provide assistance in the management of Montana's cave resources.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** Short title. [Sections 1 through 9] may be cited as "The Montana Cave Conservation Act".

NEW SECTION. **Section 2.** Definitions. As used in [sections 1 through 9], the following definitions apply:

(1) "Cave" means any geologically formed void or cavity beneath the surface of the earth or within a cliff or ledge, including but not limited to natural subsurface water and drainage systems, whether or not a natural entrance is present. The term does not include a mine, tunnel, aqueduct, or human-made excavation but does include any structure commonly known as a cavern, sinkhole, pit, grotto, or rock shelter.

(2) "Cave life" means any life form that occurs in, uses, visits, or inhabits a cave.

(3) "Department" means the department of fish, wildlife, and parks provided for in 2-15-3401.

(4) "Gate" means a structure or device located to limit or prohibit access or entry to a cave.

(5) "Material" means all or part of any archaeological, cultural, paleontological, biological, or historical item or artifact found in a cave, including but not limited to any petroglyph, pictograph, pottery, basketwork, fossil, human remains, or animal remains.

(6) "Owner" means any person or public or private agency that has the right to possession of a cave.

(7) "Person" means an individual, partnership, firm, association, trust, corporation, or other legal entity.

(8) "Speleogen" means the surrounding natural earth or bedrock in which a cave is formed, including but not limited to clastic sediments, walls, floors, ceiling, and other related structural and geological features.

(9) "Speleothem" means a natural mineral formation or deposit occurring in a cave, including but not limited to formations known as stalagmite, stalactite, helectite, shield, anthodite, gypsum flower and needle, angel's hair, soda straw, drapery, bacon, cave pearl, popcorn, rimstone dam, column, palette, and flowstone. A speleothem is commonly composed of calcite, gypsum, epsomite, aragonite, celestite, or other similar mineral.

NEW SECTION. **Section 3. Vandalism of cave unlawful.** A person may not purposely or knowingly, without prior written

LC 0971/01

permission of the owner:

(1) carve, write, mark upon, break, crack, burn, or remove or in any manner destroy, disturb, deface, mar, or harm the surfaces of any cave or material found in a cave, whether attached or broken, including speleothems, speleogens, and sedimentary deposits;

(2) break, force, tamper with, or otherwise disturb a lock, gate, door, or other obstruction designed to control or prevent access to a cave;

(3) remove, deface, or tamper with a sign stating that a cave is posted or citing provisions of [sections 1 through 9]; or

(4) disturb or alter in any way the natural condition of a cave.

NEW SECTION. **Section 4. Disturbance of cave life unlawful.** A person may not purposely or knowingly remove, kill, harm, or otherwise interfere with cave life, except for health or safety reasons or when the act is a minimal disturbance or for removal of organisms for recognized scientific inquiry. Gates at the entrance or at any point within a cave must be of open construction to allow unimpeded passage of air, insects, bats, and other cave life.

NEW SECTION. **Section 5. Pollution of and burning harmful substances in cave unlawful.** (1) A person may not

purposely or knowingly store, dump, litter, dispose of, or otherwise place in a cave any refuse, garbage, dead animal, sewage, or toxic substance harmful to cave life or human life.

(2) A person may not burn in a cave any substance that produces smoke or gas that is or may be harmful to cave life. The use of a carbide lamp that produces acetylene gas is permitted.

NEW SECTION. **Section 6.** Sale of speleothems and speleogens unlawful. A person may not sell, offer for sale, or export for sale any speleothem or speleogen.

NEW SECTION. **Section 7.** Department powers. The department may:

(1) employ cave resources management personnel;

(2) appoint volunteer cave management and administrative personnel;

(3) provide cave owners with technical assistance and management advice;

(4) enter into volunteer management agreements with persons, owners, members, and associations of the caving community;

(5) initiate a comprehensive inventory of cave resources;

(6) issue grants from any appropriated funds in furtherance of cave resource management; and

(7) perform other actions when appropriate and consistent with the provisions of [sections 1 through 9].

NEW SECTION. **Section 8.** Conditions of owner liability. The owner of a cave or the owner's authorized agent, officer, employee, or designated representative acting within the scope of authority is not liable for injuries or death sustained by any person using a cave for recreational or scientific purposes if the prior consent of the owner has been obtained and a charge has not been made for use of the cave or if the injury or death occurs while the person is trespassing on the owner's property.

NEW SECTION. **Section 9.** Penalty. A person convicted of violating any provision of [sections 1 through 8] is subject to a fine of not less than $500 or more than $2,000, imprisonment in the county jail for not more than 60 days, or both.

NEW SECTION. **Section 10.** Effective date. [This act] is effective on passage and approval.

-End-

MINUTES

MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chair Bianchi, on February 1, 1993, at 1:04 p.m.

ROLL CALL

Members Present:
Sen. Don Bianchi, Chair (D)
Sen. Bob Hockett, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Lorents Grosfield (R)
Sen. Tom Keating (R)
Sen. Ed Kennedy (D)
Sen. Bernie Swift (R)
Sen. Chuck Swysgood (R)
Sen. Henry McClernan (D)
Sen. Larry Tveit (R)
Sen. Cecil Weeding (D)
Sen. Jeff Weldon (D)

Members Excused: None.

Members Absent: None.

Staff Present: Paul Sihler, Environmental Quality Council
Leanne Kurtz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: SB 214, SB 225
Executive Action: None.

HEARING ON SB 214

Opening Statement by Sponsor:

Sen. Weldon, SD 27, said he hopes SB 214 will strike a balance between the need to conserve cave resources and concerns of land owners. He said SB 214 prohibits the vandalizing of cave surfaces and cave formations, and forbids harming cave life, polluting caves and selling cave materials. He said Section 7 grants authority to the Department of Fish Wildlife and Parks (FWP) to employ cave resource management personnel, provide

technical assistance, and provide an inventory of cave resources. Sen. Weldon stated he did not intend to place a burden on FWP and has asked for an amendment to strike Section 7, negating the bill's fiscal note. Sen. Weldon said the objective of Section 8 was to encourage cave owners to allow more people in the caves. He added the bill authorizes the county attorney to assess a misdemeanor penalty. Sen. Weldon stated there are at least 350 caves in Montana, providing habitat and housing unique resources. He noted at least 23 other states have similar cave protection laws.

Proponents' Testimony:

David Roemer, a member of the Lake Missoula Grotto of the National Speleological Society, submitted a written copy of his testimony (Exhibit #1), and passed around photographs of cave features.

Bruce Boehmler, chairman of the Lake Missoula Grotto of the National Speleological Society, discussed examples of cave vandalism and pollution.

Richard Boehmler, Montana Chapter of the Sierra Club, stressed that caves may take tens of thousands of years to recover from vandalism and pollution. He stated private landowners should not be held liable if an individual is injured in a cave.

Sam Martinez, member of the Lake Missoula Grotto and the National Speleological Society, said he has studied caves for years. He noted caves on federal land are already protected and other states have cave protection laws. Mr. Martinez stated cave owners have little or no way to protect contents of a cave from damage and restoration would take "several lifetimes". He added SB 214 would be a deterrent to vandals and specimen hunters, and discussed the unique characteristics of caves and cave life. Mr. Martinez stated about 60% of Montana's caves are located on state or private land, and landowners are likely to close entrances to caves for fear of legal liability.

Janet Ellis, Montana Audubon Legislative Fund, stated the Fund supports SB 214 because the unique and fragile features of caves must be protected. She mentioned the slow growth of cave formations.

Jim Jensen, Montana Environmental Information Center (MEIC), said liability is an important policy question, and added MEIC is concerned with the wildlife that use the caves.

Bob Barry, former BLM staff specialist responsible for management of about 30 caves in Wyoming, said he sees SB 214 as just one aspect of cave management. Mr. Barry noted the bill would not involve extensive enforcement, but would act as a deterrent. He stated there is no attempt to restrict owners' property rights in

SB 214. Mr. Barry stated the job described in SB 214 would not entail the amount of work the fiscal note suggests. He discussed the extremely slow recovery and growth of cave features.

Arnie Olsen, administrator of the Parks Division, Montana Fish, Wildlife and Parks, read from written testimony (Exhibit #2).

Kirsten Talmage, a University of Montana environmental studies graduate student, discussed the importance of caves in education, as they are examples of geology and hydrology in action.

Opponents' Testimony:

Russell Hill, executive director, Montana Trial Lawyers Association (MTLA), read from written testimony (Exhibit #3), expressing opposition to Section 8 of SB 214.

Questions From Committee Members and Responses:

Sen. Weeding asked if Sen. Weldon had given any thought to the definition of a "sink hole" in drafting SB 214. David Roemer replied a sink hole is a feature where the entrace to a cave is formed on a flat plain. He said sink holes are not common in Montana, but the language was included to mirror standard language in other states. Sen. Weeding said he was concerned about the terminology because in eastern Montana, sink holes line the creeks. He said he would not want SB 214 to prohibit people from putting a dead animal or old barbed wire in the hole. Mr. Roemer assured Sen. Weeding that a sink hole as in SB 214 refers to an entrance of a cave. Sen. Weeding asked about liability and Sen. Weldon stated MTLA and people from the Lake Missoula Grotto have been working out language to strengthen the section concerning liability.

Sen. Kennedy asked what percentage of Montana's caves are on private land. David Roemer replied approximately 24 caves out of 350 are located on private land. Sen. Kennedy asked Sen. Weldon if he had spoken with any landowners who had caves on their land. Sen. Weldon said he had not.

Sen. McClernan asked Mr. Olsen how FWP prosecuted the individuals responsible for vandalizing Lewis and Clark Caverns last year. Mr. Olsen stated the case was tried in the Jefferson County courts, and FWP charged the offenders with breaking and entering, and vandalism. He noted FWP had difficulty placing a value on what was damaged because the features are irreplaceable.

Sen. Keating and Sen. Weldon discussed the idea that graffiti of 500 years ago constitutes historically significant pictographs now.

Sen. Kennedy asked Mr. Olsen why SB 214 is needed. Mr. Olsen said SB 214 is important to provide additional coverage for irreplaceable Native American cultural resources, geological features and wildlife resources.

Sen. Bartlett asked if the definition of cave life could apply to humans, and if an individual could make a case that interfering with a person in a cave might be in violation of the statute. Mr. Roemer said similar language regarding cave life is in most of the other states' laws, and he does not believe there has been any legal challenge to the statute in other states.

Closing by Sponsor:

Sen. Weldon stated people are working on the liability language and he is committed to presenting amendments in time for executive action.

HEARING ON SB 225

Opening Statement by Sponsor:

Sen. Rye, SD 47, stated SB 225 lays the ground work for future legislation. He said he is a member of the Environmental Quality Council (EQC) as well as the executive director of a Billings homebuilders association. Sen. Rye stated SB 225 is the result of a collaboration among people who generally do not agree on many other issues.

Informational Testimony:

Deborah Schmidt, executive director, EQC, described the process from which SB 225 resulted. She said energy resources received attention during the 1991 legislature because of the Persian Gulf war. The 1991 legislature directed EQC to conduct an energy policy study for Montana, but appropriated no money. Ms. Schmidt stated EQC felt the best way to spend its limited resources while complying with the legislature's mandate was to involve all groups and diverse interests concerned with energy policy. She distributed a copy of the energy policy report (Exhibit #4), as well as a list of individuals from various organizations that developed the state energy policy goal statement. Ms. Schmidt stressed Section 1 is intended to guide future state energy policy development, and would not affect existing programs. She noted SB 225 would "set up a process that would provide for an evaluation of the effects of proposed energy policy modifications." Ms. Schmidt stated Section 3 provides for energy policy development on a consensus basis wherever possible. She stated the Northwest Power Planning Council (NWPPC) has participated in the development of SB 225. Ms. Schmidt added SB 225 provides for the application of an energy fiscal note

ROLL CALL

SENATE COMMITTEE Natural Resources DATE 2/1

NAME	PRESENT	ABSENT	EXCUSED
Sen. Bianchi	X		
Sen. Hockett	X		
Sen. Bartlett	X		
Sen. Doherty	X		
Sen. Grosfield	X		
Sen. Keating	X		
Sen. Kennedy	X		
Sen. Swift	X		
Sen. Sykes	X		
Sen. McClernan	X		
Sen. Treat	X		
Sen. Weeding	X		
Sen. Weldon	X		

F08

Attach to each day's minutes

Statement of David Roemer before the Senate Natural Resources Committee, February 1, 1993:

Mr. Chairman, members of the Committee; My name is David Roemer. I live in Missoula. I am a member of the Lake Missoula Grotto of the National Speleological Society, the American Cave Conservation Association, and Bat Conservation International, and have devoted considerable time over the past four years towards understanding an uncommon and oft-neglected resource - caves. I strongly support SB 214 because it will help to preserve a little-known, yet important part of Montana's heritage.

The testimony you will hear this afternoon from Montana cavers and members of conservation groups, will reflect on the importance of caves, and the need for legislation to protect Montana's cave resources.

There are approximately 350 known caves in Montana, with many more likely to be found. Caves are a rare and unique resource that is highly vunerable to problems of pollution and vandalism. Less than three years ago there was a highly publicized incident of vandalism at Lewis and Clark Caverns State Park. That incident, unfortunately, was by no means rare. Vandalism and pollution are real threats to our fragile cave resource. A cave conservation act is a timely measure, needed to highlight the importance of Montana's caves before more damage is done.

Montana caves are important in several ways; for example, there is the **biological value** of caves. Cave ecosystems often contain small populations of uncommon or threatened species such as the Western Big-eared bat, which is considered to be a sensitive species in Montana. Caves likely contain undescribed and unstudied species of invertebrates. Protecting cave habitat now would help to prevent cave species from becoming endangered in the future.

Water quality is an issue that is highly connected to caves because many Montana caves serve as a natural conduit for surface water and groundwater. It is essential to keep caves free from pollution to protect water quality.

Montana caves have great **cultural and historic values**. Pictographs, stone tools, and burial sites have been discovered in caves in Montana. Many of these sites have been damaged by vandalism.

SENATE NATURAL RESOURCES
EXHIBIT NO. 1
DATE 2/1
BILL NO. SB 214

Inscription Cave near Billings and Point-of-Rocks Cave near Whitehall are two caves that have had pictographs destroyed by vandals.

The **geological value** of caves is familiar to people who have ever visited Lewis and Clark Caverns or another cave. Caves may preserve features that we can use to interpret the geologic history of an area. The minerals found within caves - stalactites and stalagmites are the most familiar - may be rare, and have great scientific and aesthetic value. These formations fas[illegible]te people not only for their beauty, but for the great length of [illegible]e required to make them. They may grow a few millimeters per [illegible]ar, if that much. Some formations are estimated to be 800,000 years old. When they are broken off, they are essentially irreplaceable.

Caves have **recreational and commercial value** as well. Organized caving is growing in the United States and in Montana. Many cavers are associated with national conservation groups, and use caves for recreation and research.

There are 23 states with cave protection legislation. In states without effective cave protection laws, cave resources are being destroyed at what is sometimes an alarming rate (Bexar County, Texas). Land development pressure and the lack of liability protection have led to some caves being bulldozed shut. Rather than face the prospect of being sued over a potenial cave-related injury, cave owners sometimes close their caves to cavers, or more seriously, bulldoze them closed entirely. Some eastern caves have been closed because untreated sewage flows through them. People often dump trash and dead livestock in sinkholes which destroys cave life. In Montana, vandalism has destroyed irreplaceable cultural artifacts and cave minerals.

This bill is a good idea. It balances cave conservation with private landowner's rights. This bill will help to increase public awareness of caves, and for the need to use them wisely, not destructively. Only a strong cave conservation law will adequately protect Montana's great cave resources. I urge the committee to support this bill with all of its provisions intact.

Thank you.

SB 214
February 1, 1993

Testimony presented by Arnie Olsen, Dept. of Fish, Wildlife & Parks before the Senate Natural Resources Committee

SB 214, the Montana Cave Conservation Act, calls for protection of the state's caverns. Some of the protection written into the bill already exists under separate state and federal legislation. However, SB 214 gives stature to and profiles the important cave resources in our state.

We support the preservation and protection concepts embodied in the bill. However, there is an operational concern that we would like to address with a proposed amendment. We proposed that section 7 be eliminated from the bill so the department is not taking on duties it cannot perform. Even though the Parks Division is the logical entity to manage these resources, under current financial constraints we are unable to take on additional duties, particularly on private lands.

We would support SB 214 if this amendment is adopted.

SENATE NATURAL RESOURCES
EXHIBIT NO. 2
DATE 2/1
BILL NO. SB 214

PROPOSED AMENDMENT TO SB 214
FIRST (WHITE) COPY

1. Title, page 1, line 8.
Following: "SPELEOGENS;"
Strike: "GRANTING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS AUTHORITY TO ASSIST IN THE MANAGEMENT OF MONTANA'S CAVE RESOURCES;"

2. Page 2, line 24 through 25.
Strike: subsection (3) in it entirety
Renumber: subsequent sections

3. Page 5, line 12 through page 6, line 2.
Strike: NEW SECTION. Section 7. in its entirety

4. Page 6, line 7.
Following: "cave"
Strike: "for recreational or scientific purposes"

Montana Trial Lawyers Association

Executive Office
#1 Last Chance Gulch
Helena, Montana 59601
Tel: 443-3124

'ectors:
de Dahood
)irector Emeritus
)nte D. Beck
)mas J. Beers
chael D. Cok
chael W. Cotter
:l J. Englund
)ert S. Fain, Jr.
:tor R. Halverson, Jr.
ne R. Jarussi
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February 1, 1993

Sen. Don Bianchi, Chair
Senate Natural Resources Committee
Room 405, State Capitol
Helena, MT 59624

SENATE NATURAL RESOURCES
EXHIBIT NO. 3
DATE 2/1
BILL NO. SB 214

RE: SB 214

Mr. Chair, Members of the Committee:

Thank you for this opportunity to express MTLA's limited opposition to SB 214, which protects and preserves Montana's caves. MTLA bases its opposition to the bill solely on Section 8, which provides virtually blanket immunity to cave owners from liability for their own negligence, gross negligence, even wilfill or wanton misconduct.

MTLA recognizes the right of individuals in a free society to make decisions for themselves and to willingly and knowingly accept the risks and consequences of those decisions. MTLA does not--and can't--presume to deny those rights to decide.

MTLA also recognizes the legitimate interests of the state and concerned citizens in protecting and preserving Montana's caves. MTLA expects that it can cooperate with proponents of SB 214 to devise mutually agreeable amendments to Section 8.

At present, however, MTLA opposes Section 8 for several reasons:

1. Essentially, this section of the bill sells the fundamental right of every Montana citizen to be protected from the wrongdoing of others. Just as no citizen can sell his or her right to vote in a free society, so no citizen should be able to sell the right to protection from wrongdoing. Among cavers who obtain permission, those who don't pay give up their right to recover for wrongdoing wihile those who do pay retain those rights. More puzzling, there's no distinction whatsoever in this section between cavers who obtain permission and free access and cavers who trespass: both surrender their fundamental right to recover for

wrongdoing. Consequently, it seems, a caver has no incentive to obtain permission.

2. The current language of Sec. 8 immunizes serious wrongdoing. For example, it would prevent recovery by a caver when the cave collapses because of excavation or heavy machinery used by the cave owner. It would prevent recovery when the caver is overcome by methane gas from garbage dumped in the cave by the cave owner. Similarly, there would be no recovery for a youth injured or killed after trespassing to explore a cave on the edge of a landowner's property, even if dozens of other youths have previously been attracted to and hurt in the cave.

3. Currently, no caver or trespasser can recover damages unless they demonstrate that a cave owner caused the injury or damage through fault. MTLA believes that the intent of SB 214 would be better served by an amendment which prescribes, in statutory language, the contents of a signed notice or permission form. Such statutory language would create a rebuttable presumption that a cave owner who obtained such a signed form has properly granted access to the cave and would clarify that cavers accept those risks of injury and damage which are a necessary part of exploring caves.

Thank you for considering these comments. If I can provide additional information or assistance, please contact me.

Respectfully,

Russell B. Hill
Executive Director

Amendments to Senate Bill No. 214
First Reading Copy

Requested by Senator Weldon
For the Committee on Natural Resources

Prepared by Paul Sihler
January 28, 1993

1. Title, lines 8 through 10.
Strike: "GRANTING" on line 8 through "RESOURCES;" on line 10

2. Page 2, lines 4 through 6.
Strike: the second "and" on line 4 through "resources" on line 6

3. Page 2, lines 10 and 13.
Page 4, line 12.
Strike: "9"
Insert: "8"

4. Page 2, lines 24 and 25.
Strike: subsection 3 in its entirety
Renumber: subsequent subsections

5. Page 5, line 12 through page 6, line 2.
Strike: section 7 in its entirety
Renumber: subsequent sections

6. Page 6, line 13.
Strike: "8"
Insert: "7"

SENATE NATURAL RESOURCES
EXHIBIT NO. 3A
DATE 2/1
BILL NO. SB 214

MINUTES

MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chair Bianchi, on February 5, 1993, at 4:35 p.m.

ROLL CALL

Members Present:

Sen. Don Bianchi, Chair (D)
Sen. Bob Hockett, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Lorents Grosfield (R)
Sen. Tom Keating (R)
Sen. Ed Kennedy (D)
Sen. Bernie Swift (R)
Sen. Chuck Swysgood (R)
Sen. Henry McClernan (D)
Sen. Larry Tveit (R)
Sen. Cecil Weeding (D)
Sen. Jeff Weldon (D)

Members Excused: None.

Members Absent: None.

Staff Present: Paul Sihler, Environmental Quality Council
Leanne Kurtz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: None
Executive Action: SB 158, SB 171, SB 196, SB 214, SB 261,

EXECUTIVE ACTION ON SB 158

Motion/Vote:

Sen. Kennedy MOVED TO AMEND SB 158. The MOTION CARRIED UNANIMOUSLY.

Motion:

Sen. Weeding MOVED SB 158 BE INDEFINITELY POSTPONED.

Sen. Keating added that public health in urban areas should be protected through legislation.

Vote:

The MOTION to PASS CONSIDERATION on SB 196 CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 214

Motion:

Sen. Weldon MOVED TO AMEND SB 214 (SB021402.PCS).

Discussion:

Sen. Weldon explained that the amendments strike the involvement of Fish, Wildlife and Parks (FWP) in SB 214, noting that he did not intend for the department to have to spend money on the project. Sen. Weldon discussed the changes made to Section 8. He said Section 70-16-301 MCA was amended to incorporate "spelunking" into the current law.

Vote:

The MOTION to AMEND SB 214 CARRIED UNANIMOUSLY.

Motion:

Sen. Weldon MOVED SB 214 DO PASS AS AMENDED.

Discussion:

Referring to page 3, lines 12 through 23, Sen. Grosfield asked if the surface owner or the subsurface owner owns the cave minerals. Sen. McClernan said most of the minerals on line 22, are regarded as "common varieties" in federal law, meaning a person could not stake a mining claim.

Sen. Tveit asked Mr. Sihler if the liability provision would apply if a cave owner was proven negligent. He asked if an owner could be sued if he or she allowed someone into a dangerous cave, even if a liability contract was signed. Mr. Sihler read from 70-16-302 MCA which states that the landowner owes no duty of care with respect to condition of the property, except that the landowner is liable for injury "for an act of omission that constitutes willful or wanton misconduct."

Sen. Swysgood asked if Subsection 2 of Section 5 would apply to someone who was lost and built a fire in a cave to keep warm. David Roemer said smoke from a campfire or a candle would not constitute a violation of SB 214, as it would not be harmful to cave life. He added the language is standard in other state's bills.

Sen. Grosfield asked Russell Hill, Montana Trial Lawyers Association (MTLA) whether a landowner would be liable if someone was hurt in a cave the landowner didn't know he had. Mr. Hill said it would depend on whether or not the person was a "recreational user".

Sen. Weldon noted the liability question will exist whether or not the Committee passes SB 214.

Sen. Keating said SB 214 would be new law, and every part of the statute would be tested if it is placed in the codes. He added he does not believe that SB 214 is necessary.

Sen. Weldon defended SB 214, and said the legislature shouldn't shy away from the bill simply because its new law.

Vote:

The MOTION that SB 214 DO PASS AS AMENDED CARRIED with Sen. Swift, Sen. Keating, and Sen. Swysgood voting NO.

EXECUTIVE ACTION ON SB 261

Motion:

Sen. Doherty MOVED SB 261 DO PASS.

Discussion:

Sen. Doherty said there are four subdivision bills in the House and briefly described each bill. The Committee discussed how all the subdivision bills would be organized with the House.

Chair Bianchi said the House and Senate Committees will look at each bill on an individual basis and deal with what remains in a conference committee or on the floor.

Sen. Grosfield said he is concerned that SB 261 only deals with exemptions, and does not address the review process except in cases of minor subdivisions.

Sen. Swift expressed concern over the "applause meter" and said he cannot support SB 261.

SENATE STANDING COMMITTEE REPORT

February 6, 1993

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration Senate Bill No. 214 (first reading copy -- white), respectfully report that Senate Bill No. 214 be amended as follows and as so amended do pass.

Signed: Don Bianchi
Senator Don Bianchi, Chair

That such amendments read:

1. Title, lines 8 through 10.
Strike: "GRANTING" on line 8 through "RESOURCES;" on line 10

2. Title, line 12.
Following: "PENALTY;"
Insert: "AMENDING SECTION 70-16-301, MCA;"

3. Page 2, lines 4 through 6.
Strike: the second "and" on line 4 through "resources" on line 6

4. Page 2, lines 24 and 25.
Strike: subsection 3 in its entirety
Renumber: subsequent subsections

5. Page 5, line 12 through page 6, line 2.
Strike: section 7 in its entirety
Renumber: subsequent sections

6. Page 6, line 4.
Following: "The"
Insert: "liability of the"

7. Page 6, lines 6 through 11.
Strike: "not" on line 6 through "." on line 11
Insert: "restricted pursuant to 70-16-302.

Section 8. Section 70-16-301, MCA, is amended to read:

"70-16-301. Recreational purposes defined. "Recreational purposes", as used ~~herein~~ in this part, ~~shall~~ include hunting, fishing, swimming, boating, water skiing, camping, picnicking, pleasure driving, winter sports, hiking, touring or viewing cultural and historical sites and monuments, spelunking, or other pleasure expeditions."

-END-

m Amd. Coord.
___ Sec. of Senate

Amendments to Senate Bill No. 214
First Reading Copy

Requested by Senator Weldon
For the Committee on Natural Resources

Prepared by Paul Sihler
February 5, 1993

1. Title, lines 8 through 10.
Strike: "GRANTING" on line 8 through "RESOURCES;" on line 10

2. Title, line 12.
Following: "PENALTY;"
Insert: "AMENDING SECTION 70-16-301, MCA;"

3. Page 2, lines 4 through 6.
Strike: the second "and" on line 4 through "resources" on line 6

4. Page 2, lines 24 and 25.
Strike: subsection 3 in its entirety
Renumber: subsequent subsections

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Insert: "restricted pursuant to 70-16-302.

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{Internal References to 70-16-301:
x 15-6-133 x 87-1-504}
Renumber: subsequent sections

SENATE NATURAL RESOURCES
EXHIBIT NO.
DATE 2/5
BILL NO.

Proxy

SB60 yes do pass
SB72 yes do pass
SB158 yes — table motion

SB196 NO, DO NOT pass
SB 214 yes, do pass w/ amdts.
SB225 yes, do pass

SB171 WANT amendments; if amdts do pass
if no amdts, do not pass

- Elere Oldenburg

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN DICK KNOX**, on March 5, 1993, at 3:00 p.m.

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)
Rep. Rolph Tunby, Vice Chairman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Russ Fagg (R)
Rep. Gary Feland (R)
Rep. Mike Foster (R)
Rep. Bob Gilbert (R)
Rep. Hal Harper (D)
Rep. Scott Orr (R)
Rep. Bob Raney (D)
Rep. Dore Schwinden (D)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Howard Toole (D)
Rep. Doug Wagner (R)

Members Excused: None

Members Absent: None

Staff Present: Todd Everts, Environmental Quality Council
Michael Kakuk, Environmental Quality Council
Roberta Opel, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: SB 225, SB 214, SB 275
Executive Action: None

HEARING ON SB 225

Opening Statement by Sponsor:

SEN. DAVID RYE, SD 47, Billings, said SB 225 sets up methodology for future energy legislation. He also said the Senate Natural Resources committee supported the bill with the new sections.

HEARING ON SB 214

Opening Statement by Sponsor:

SEN. JEFF WELDON, SD 27, Arlee, presented SB 214, the Montana Cave Conservation Act. The bill would penalize vandalizing the surface and formation of caves and would protect cave life. A fine for violators would be levied. He said there are 350 known caves in Montana and the potential danger to these caves is grave. Twenty-three states currently have cave legislation.

Proponents' Testimony:

David Roemer, graduate student, University of Montana and member of the Lake Missoula Grotto of the National Speleological Society, said he supported SB 214 as it would protect an important part of Montana's heritage. **EXHIBIT 5**

Janet Ellis, Montana Audubon Legislative Fund, spoke in support of the bill which she said would protect the fragile and unique aspects of cave geography and creatures.

Bruce Behmler, Lake Missoula Grotto, said cave formations have been disturbed by vandals and therefore supported SB 214.

Dick Boehmeler, Sierra Club, speaking in favor of SB 214 stated cave formations are extremely valuable.

J.V. Bennett, Montana Wildlife Federation, submitted testimony supporting the bill. **EXHIBIT 6**

Arnie Olsen, Montana Department of Fish, Wildlife and Parks, testified in support of SB 214. **EXHIBIT 7**

Kirsten Talmage, graduate student, University of Montana, stated caves are an important educational resource. **EXHIBIT 8**

Opponents' Testimony: None.

Questions From Committee Members and Responses:

REP. GILBERT stated the terms sinkhole and pit were synonymous with cave much as grotto and pit are slang terms for cave.

SEN. WELDON said the term sinkhole does not necessarily mean cave. He noted a definition of such terms could be included in the bill.

REP. WAGNER said the caving community would be the individuals policing the bill.

Mr. Roemer said that carbide lamps and a hand-held camera would be acceptable within the caves.

REP. GILBERT said that the bill does not differentiate between public and private caves nor does it discuss permission from cave owners. **Mr. Roemer** noted that the differentiation was omitted in order to balance cave protection and private landowner rights.

REP. GILBERT asked if there was a marked distinction within the bill regarding who owns cave property.

REP. WELDON replied that Sections 4 and 5 of the bill address property rights.

Closing by Sponsor:

SEN. WELDON said SB 225 has further educated him about cave resources. He said he is willing to work on amendments to the bill that would change the effective date.

HEARING ON 275

Opening Statement by Sponsor:

SEN. JEFF WELDON, SD 27, Arlee, said that SB 275 would provide civil or criminal penalty for unapproved stream-bed modification. He presented amendments to the committee. **EXHIBIT 9**

Proponents' Testimony:

Mike Volesky, Montana Association of Counties (MAC), presented a summary of proponent testimony **EXHIBIT 10** from **Martha E. McClain, Missoula County Deputy Attorney; Larry Nistler, Lake County Attorney,** and **George Corn, Ravalli County Attorney. EXHIBITS 11, 12 and 13, respectively.**

Steve Schmitz, Bureau Chief, Conservation Districts Bureau, Department of Natural Resources and Conservation (DNRC), told the committee he was charged with administering the Streambed Protection Act, initiated in 1975. **EXHIBIT 14**

Jim Jensen, Montana Environmental Information Center (MEIC), on behalf of Lewis and Clark County, said conservation district supervisors are problem solvers. He stated SB 275 will give them an additional tool for solving problems.

Clay Landry, Trout Unlimited, said the bill would protect downstream water users as well as fish and habitat.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. STOVALL asked if the conservation districts would offer technical assistance relating to streambed modification. **Mr. Volesky** replied that MAC would offer some assistance, **EXHIBIT 15,**

HOUSE OF REPRESENTATIVES
53RD LEGISLATURE - 1993
NATURAL RESOURCES COMMITTEE

ROLL CALL DATE 3/5/93

NAME	PRESENT	ABSENT	EXCUSED
REP. DICK KNOX, CHAIRMAN	Y		
REP. ROLPH TUNBY, VICE CHAIRMAN	Y		
REP. JODY BIRD	Y		
REP. VIVIAN BROOKE	Y		
REP. RUSS FAGG	Y		
REP. GARY FELAND	Y		
REP. MIKE FOSTER	Y		
REP. BOB GILBERT	Y		
REP. HAL HARPER	Y		
REP. SCOTT ORR	Y		
REP. BOB RANEY	Y		
REP. DORE SCHWINDEN	Y		
REP. JAY STOVALL	Y		
REP. EMILY SWANSON	Y		
REP. HOWARD TOOLE	Y		
REP. DOUG WAGNER	Y		

HR:1993
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CS-09

EXHIBIT D
DATE 3-5-93
HB SB 214

Mr. Chairman and the Committee,

For the record, I am Kirsten Talmage, a graduate student in environmental education in Missoula. I am an occasional caver, and I have worked in Carlsbad Caverns National Park, and other locations with caves. I teach children outdoors. I am here to support the Montana Cave Conservation Act, SB 214.

In addition to the reasons given by David Roemer, Senator Jeff Weldon, and others, caves should be protected as an educational resource. Most educational theory says that a child learns best when he or she is doing, and that showing is more effective than simply telling. Caves therefore provide excellent sites for teaching the following concepts:

1) ongoing geological processes, especially chemical weathering and deposition;

2) the fragility, diversity, and uniqueness of ecosystems;

3) hydrology, because caves are natural piping and often filtering systems for water;

4) local history, both before and after white settlement;

5) appreciation for "natural art";

6) self-esteem, through carefully-led safe risk-taking (i.e. a situation which is actually safe, yet challenges a student to go beyond his/her fears); and

7) empathy for others who are afraid, e.g. their friends or characters in books such as Tom Sawyer.

These things can best be taught through field trips, but that requires known and safe caves, caves with easy access. Without protection, these are precisely the sort of caves that are most vulnerable to vandalism and graffiti. Naturally, undamaged caves would be better than broken ones for teaching.

In order to provide for continued educational opportunities, I urge you to protect Montana's caves by passing Senate Bill 214.

Thank you.

Kirsten Talmage
1610 Arthur Ave.
Missoula, MT 59801
5 March 1993

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Natural Resources COMMITTEE BILL NO. SB 214

DATE 3/5/93 SPONSOR(S) SEN. WELDON

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
David Roemer 1610 Arthur Msla MT	Lake Missoula Grotto	✓	
Annie Olson	MDFWP	✓	
Dick Bachelor	Sierra Club	✓	
Bruce Bachelor	Lake Missoula Grotto	✓	
Bob Barry	Myself	✓	
J.V. Bennett	Montana Wildlife Federation	✓	
Janet Ellis	MT Audubon	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

REP. BROOKE moved to segregate amendments 1, 3 and 4 from amendments 2 and 5 of the bill.

Motion/Vote: Motion to adopt Numbers 1, 3 and 4 of the amendments. Motion carried unanimously.

REP. GILBERT stated the amendment was designed to direct monies back to the general fund.

Motion/Vote: **REP. BROOKE** moved to adopt amendments 2 and 5 of the bill. Motion carried unanimously.

Motion/Vote: **MOTION THAT SB 275 BE CONCURRED IN AS AMENDED.** Motion carried with one opposing vote.

EXECUTIVE ACTION ON 214

Motion: **MOTION BY REP. GILBERT THAT SB 214 BE CONCURRED IN AS AMENDED. EXHIBIT 10**

Discussion: **REP. TUNBY** stated he understood **REP. GILBERT'S** concern, as the bill, without the amendment, extends the authority of the state too far.

REP. STOVALL asked what would be the consequence for defacing one's own cave. **REP. GILBERT** responded that you could write yourself a permission slip.

REP. STOVALL asked if it was possible to close access to a cave on your own property.

REP. RANEY suggested a new section to replace subsections 3 and 4 of the bill.

REP. HARPER requested **Michael Kakuk, EQC legal counsel,** draft a new amendment to replace sections 3 and 4 which will allow modification to cave opening terminology. **EXHIBIT 11**

Motion: **REP. FAGG** moved to adopt amendments to SB 214. **EXHIBIT 12**

Mr. Kakuk explained that the amendments would change codification within the bill.

REP. RANEY commented that a fine is insufficient penalty for defacing a cave.

REP. TOOLE said that the fine is not too high.

Vote: **TO ADOPT REP. FAGG's AMENDMENTS TO SB 214.** Motion carried unanimously.

Vote: Executive Action on SB 214 to be continued 3-10-93.

HOUSE OF REPRESENTATIVES
53RD LEGISLATURE - 1993
NATURAL RESOURCES COMMITTEE

ROLL CALL

DATE 3-8-93

NAME	PRESENT	ABSENT	EXCUSED
REP. DICK KNOX, CHAIRMAN	✓		
REP. ROLPH TUNBY, VICE CHAIRMAN	✓		
REP. JODY BIRD	✓		
REP. VIVIAN BROOKE	✓		
REP. RUSS FAGG	✓		
REP. GARY FELAND	✓		
REP. MIKE FOSTER	✓		
REP. BOB GILBERT	✓		
REP. HAL HARPER	✓		
REP. SCOTT ORR	✓		
REP. BOB RANEY	✓		
REP. DORE SCHWINDEN	✓		
REP. JAY STOVALL	✓		
REP. EMILY SWANSON	✓		
REP. HOWARD TOOLE			✓
REP. DOUG WAGNER	✓		

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HOUSE STANDING COMMITTEE REPORT

March 11, 1993

Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 214 (third reading copy -- blue) be concurred in as amended .

Signed: Dick Knox
Dick Knox, Chair

And, that such amendments read: Carried by: Rep. Gilbert

1. Title, line 14.
Following: second ";"
Insert: "AND"

2. Title, line 15.
Following: "MCA"
Strike: ";" through "DATE"

3. Page 2, lines 12 and 15.
Following: "through"
Insert: "7 and"

4. Page 2, line 21.
Following: "any"
Insert: "natural"
Following: "structure"
Insert: "that is"

5. Page 2, line 23.
Following: "shelter"
Insert: "and that communicates with a subterranean passage or drainage system"

6. Page 4, line 1.
Following: "unlawful."
Strike: "A"
Insert: "(1) Except as provided in subsection (2), a"
Renumber subsequent subsections

7. Page 4, lines 2 and 3.
Following: "knowingly" on line 2
Strike: ", without" through "owner" on line 3

3-11-93
3-11-05

Committee Vote:
Yes 16, No ___.

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8. Page 4, line 4.
Strike: "(1)"
Insert: "(a)"

9. Page 4, line 9.
Strike: "(2)"
Insert: "(b)"

10. Page 4, line 12.
Strike: "(3)"
Insert: "(c)"

11. Page 4, line 13.
Following: "through"
Insert: "7 and"

12. Page 4, line 15.
Strike: "(4)"
Insert: "(d)"

13. Page 4.
Following: line 16
Insert: "(2) The provisions of subsection (1) do not apply to a cave owner or the owner's authorized agent, officer, employee, or designated representative who undertakes work to improve or control physical access to the cave."

14. Page 6, line 24.
Strike: "8"
Insert: "7"

15. Page 7.
Following: line 2
Insert:
"NEW SECTION. Section 10. Codification instruction. [Sections 1 through 7 and 9] are intended to be codified as an integral part of Title 23, chapter 2, and the provisions of Title 23, chapter 2, apply to [sections 1 through 7 and 9]."

16. Page 7, lines 3 and 4.
Strike: Section 10 in its entirety

3-11-93
11:05